

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 326 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KASHAMBHAI JAMMABHAI SHAIKH

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE APP for Respondent Nos.1 & 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Mr. Satish R. Patel for the petitioner and learned APP Mr. K.T. Dave for respondent nos. 1 & 2. By filing this petition, the petitioner has prayed for appropriate writ or order or direction quashing and setting aside the order of externment dated 9.12.98 passed by respondent no.1-Deputy Police Commissioner (Crime), Ahmedabad and confirmed by the Deputy Secretary, Home Department, State of Gujarat,

Gandhinagar - respondent no.2 vide order dated 15.3.99 in the proceedings of appeal under section 60 of Bombay Police Act, 1951 (hereinafter referred to as "the Act").

2. The Assistant Police Commissioner "A" Division, City of Ahmedabad addressed a show cause notice dated 26.2.98 to the petitioner under section 59 of the Act wherein it has been stated that in exercise of power conferred under section 56(B) of the Act, it has been decided to extern the petitioner from the area comprising within the limits of city of Ahmedabad under the Police Commissioner and contiguous area of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana on the basis of the information received against the petitioner. The said notice further indicates the following allegations against the petitioner.

(A) That the petitioner is a headstrong person and fanatic with criminal tendency and has been committing criminal acts since August, 1997.

(B) That the petitioner with his accomplices has been looting innocent persons by showing knife or razor and giving threat of dire consequences who are passing from the area near Amdupura Bus Stand and railway colony.

(C) The petitioner has been enjoying ride in hired vehicles and has been refusing the payment of fare to the driver and on demand, has been beating the driver of the vehicles and threatening them of dire consequences by showing knife and razor.

(D) An offence vide CR No. 336/97 is registered at Kalupur Railway Police Station for the offence made punishable under section 307 of I.P.C.

3. Notice also indicate that the witnesses of the incident in respect to the above-stated criminal activity of the petitioner are not willing to come forward to give evidence on account of the fear of the petitioner. That the movement of the petitioner in the said area is causing alarm and danger to the persons residing there and passing by and it is necessary to remove the petitioner not only from the area of Ahmedabad city within the limits of Police Commissioner, Ahmedabad but also from the contiguous areas like Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana so as to maintain peace and public order.

4. On the basis of the above-stated averments, the petitioner was asked to furnish his explanation, if any, or to produce witnesses in defence on or before 12th March, 1998 and to show cause as to why the said order should not be implemented. That in order to ensure the presence of the petitioner at the hearing, the petitioner was directed to furnish a surety and a bond of Rs. 500/- and was also informed that in the event of petitioner remaining absent, the proceedings shall be proceeded ex parte.

5. That the petitioner appeared before respondent no.1 and produced his witnesses and also filed written submissions. However, in consideration of the said material, respondent no.1 passed the impugned order, copy of which is produced at Annexure :C.

6. That the petitioner has challenged the legality and validity of the said externment order dated 19.12.88 passed by respondent no.1 (impugned order) by filing an appeal under section 60 of the Act before the Deputy Secretary, Home Department, State of Gujarat, Gandhinagar. That vide order dated 15.3.99, the said appeal was dismissed and the externment order was confirmed. The petitioner has challenged the impugned externment order as well as the order of the Deputy Secretary, Home Department, State of Gujarat, Gandhinagar confirming the said externment order in the present petition.

7. Learned advocate Shri Satish R. Patel has assailed the impugned order on the grounds of non application of mind and delay in passing the externment order. It has been submitted at the Bar that the last witness produced by the petitioner in defence of the allegations made against the petitioner in the show cause notice was examined on 10.6.98. That thereafter on 16.7.98, written submissions were filed but no further proceedings were intimated to the petitioner and straightway, the petitioner is served with the impugned order of externment dated 9.12.98. Thus, delay of about 8 months itself suggests that there was no imminent need of removing the petitioner from the said area on the allegations stated in the show cause notice dated 26.2.98. Furthermore, explanation submitted by the petitioner also included the fact that the petitioner was acquitted in a criminal case arising from CR No. 336/97 made punishable under section 307 of I.P.C. which was referred to in the show cause notice. That the trial of the said criminal case itself suggests that the witnesses had come before the court to depose against the

petitioner. However, respondent no.1 has failed to take all these facts into consideration while passing the impugned order which discloses non-application of mind and as such the impugned order is vitiated. That the Deputy Secretary, Home Department, State of Gujarat, Gandhinagar has confirmed the said order by rejecting the appeal of the petitioner against the said order of externment without due consideration of submissions urged by the petitioner and hence, the impugned orders are liable to be quashed and set aside.

8. In order to support the submissions, reliance is placed on the observations made by this Court in the matter of Chothmal Sagansingh Rajput v. State of Gujarat & ors., reported vide 1989 (1) GLR P. 63.

9. It is noteworthy that despite the service of rule vide earlier order dated 8.4.99, respondent no.1 as well as respondent no.2 have failed to file any affidavit. That during the submissions, learned APP Mr. K.T. Dave attempted to salvage the issue by submitting that on account of transfer of officers, the externment proceedings against the petitioner were prolonged apart from the attempts made by the petitioner to prolong the same in producing and examining the witnesses. It is submitted by Shri K.T. Dave that the said delay cannot be said to be fatal in the facts of the present case.

10. It is true that merely delay in passing the externment order cannot be fatal to quash such order, however, such delay must be explained and if there is no reasonable explanation, then, inordinate delay would vitiate the externment order (Santosh Ramprasad Sharma v. Deputy Commissioner of Police - 1992 (2) GLH P. 457).

11. Furthermore, Division Bench of this Court in the matter of Chothmal Sagansingh Rajput (Supra) has observed in para 6 of the judgment that in externing a person, if the authority causes delay, the same will spell out that there was no urgent need or necessity to extern a person from particular locality or district. Definitely, such externment orders curtail the freedom of movement of the person concerned. Any latches on the part of the authority concerned, cannot be countenanced and it will definitely enure to the benefit of the party concerned and on that score, he will be entitled to be benefit of quashing such order of externment.

12. In the instant case, there is no affidavit filed by respondent no.1 as to how the proceedings were

prolonged by the petitioner in producing the defence witnesses and making submission and there is no explanation as to why the impugned order has been passed as late as 9.12.98 though proceedings were concluded on 16.7.98 as per the record of the respondents. That the said delay being inordinate delay following the above-stated dictum, the present petition requires to be allowed.

13. On the basis of the foregoing discussion, the impugned order of externment dated 9.12.98 passed by respondent no.1 against the petitioner as well as order dated 15.3.99 passed by the Deputy Secretary, Home Department, State of Gujarat, Gandhinagar, confirming the said order under section 60 of the Act are hereby quashed and set aside. Rule is made absolute to that extent.

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